Petition

81-1416

Office - Supreme Court, U.S.
FILED
JAN 7 1982
ALEXANDER L. STEVAS,
CLERK

No. _____

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1982

FRANK L. THOMAS, PETITIONER

V.

JUDGES ROBERT J. SOARES, JOHN A. CHILDERS, MARVIN H. LEWIS, RICHARD C. HEATON, ROBERT L. SHAW, STEVEN J. STONE, and FRED A. JONES, RESPONDENTS

Petition for a Writ of Certiorari to

The United States Court of Appeals for

The Ninth Circuit

Petitioner "pro se"

FRANK L. THOMAS, Petitioner
2080 East Hillcrest Drive
Thousand Oaks, California 91362

No Phone

QUESTIONS PRESENTED

QUESTIONS Page

1. Is the Speaking Motion for Summary Judgment legal in California? SOARES 3

2. Was due process followed when JUDGE CHILDERS would not allow a new trial? 4

3. Was due process followed in affirming the decision of JUDGE CHILDERS? LEWIS, HEATON and SHAW 5

4. Was due process followed in the hearing of December 26, 1978, in which sanctions were imposed and documents to be given? 6

5. Was due process followed when the false document was allowed into evidence? HEATON 6

6. Was due process followed by JUDGE HEATON when he failed to allow the Continuance but later the non suit? 7

7. Was due process followed when JUDGE STONE stated sanctions had to be paid and the documents furnished? 7

8. Was due process followed when THOMAS tried to get the discovery from BYRD, and

and in the Court of JUDGE STONE? 8

9. Was due process followed when JUDGE STONE TOOK SANCTIONS away from THOMAS? 9

10. Was due process followed when JUDGE STONE allowed BYRD to commit perjury? 10

11. Was due process followed when JUDGE STONE allowed a Continuance to BYRD, without the presence of FRANK? 10

12. Was due process followed in the allowing of the demurrer in this case of BYRD? By STONE 10

13. Was due process followed in the allowing the demurrer after the answer was already on file? By STONE 11

14. Was due process followed when JUDGE STONE allowed the Superior Court Case to be transferred to the Municipal Court? 12

15. Was the decision to allow the non suit correct? By JONES 13

16. Was due process followed in the denial of the new trial? By HEATON 14

TABLE OF CONTENTS

Item	Page
QUESTIONS PRESENTED	i
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	v
PETITION	1
CITATIONS TO OPINIONS	1
JURISDICTION	2
STATUTES INVOLVED	2
GENERAL STATEMENT OF FACT	3
STATEMENT OF FACT FOR QUESTION NO. 1 with DISCUSSION AND CONCLUSION	3
STATEMENT OF FACT FOR QUESTION NO. 2	4
STATEMENT OF FACT FOR QUESTION NO. 3	5
STATEMENT OF FACT FOR QUESTION NO. 4	5
STATEMENT OF FACT FOR QUESTION NO. 5	6
STATEMENT OF FACT FOR QUESTION NO. 6	7
STATEMENT OF FACT FOR QUESTION NO. 7	7
STATEMENT OF FACT FOR QUESTION NO. 8	8
STATEMENT OF FACT FOR QUESTION NO. 9	9
STATEMENT OF FACT FOR QUESTION NO. 10	9
STATEMENT OF FACT FOR QUESTION NO. 11	10

Item	Page
STATEMENT OF FACT FOR QUESTION NO. 12	10
STATEMENT OF FACT FOR QUESTION NO. 13	11
STATEMENT OF FACT FOR QUESTION NO. 1	12
STATEMENT OF FACT FOR QUESTION NO. 15	13
STATEMENT OF FACT FOR QUESTION NO. 16	14
PRAYER	16
APPENDIX	17
AFFIDAVIT OF SERVICE	5

TABLE OF AUTHORITIES

Designation	Page
UNITED STATES CONSTITUTION	
First Amendment	2
Fifth Amendment	2
Fourteenth Amendment	2
UNITED STATES CODE	
28 U. S. C. 1254 (1)	2
28 U. S. C. 1343 (1-2-3-4)	2
42 U. S. C. 1983, 1985 (2-3) & 1986	2
CALIFORNIA STATE STATUTES	
California Code of Civil Procedure section 437c	3

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1982

No._____

FRANK L. THOMAS, PETITIONER

V.

JUDGES ROBERT J. SOARES, JOHN A. CHILDERS, MARVIN H. LEWIS, RICHARD C. HEATON, ROBERT L. SHAW, STEVEN J. STONE, and FRED A. JONES, RESPONDENTS

Petition for a Writ of Certiorari to The United States Court of Appeals for The Ninth Circuit

---

Petitioner requests that a Writ of Certiorari issue to review the MEMORANDUM of the United States Court of Appeals for the Ninth Circuit in this Case No. 80 5242.

CITATIONS TO OPINIONS

(Not Reported)

1. The Memorandum of the Court of Appeals is set forth in Appendix "B" of the Petition.

2. The Order of the United States District Court is set forth in Appendix "A" of the Petition.

JURISDICTION

1. The Court of Appeals entered the memorandum on October 13, 1981 App. "B", p-3

STATUTES INVOLVED

Jurisdiction was gained over the subject matter in the Federal District Court under 28 United States Code section 1343, paragraphs 1, 2, 3 and 4, 42 U. S. C. 1983, 1985, paragraphs 2 and 3 and section 1986. Jurisdiction also involved the Fourteenth Amendment of the Constitution of the U. S.

The Fifth Amendment to the U. S. Constitution provides in pertinent part:

> ...No person shall...be deprived of life, liberty or property without due process of law.

The First Amendment of the U. S. Constitution protects the reputation of the person.

GENERAL STATEMENT OF FACT

This Petition for Certiorari is sought when there is a failure of due process of law.

FRANK L. THOMAS Petitioner filed an action against SOARES, CHILDERS, LEWIS, HEATON, SHAW, STONE and JONES, in the Federal District Court No. 79 3064-F, upon Appeal became No. 80 5242. The CAUSE OF ACTION WAS CONSPIRACY AND FRAUD IN DENIAL OF EQUAL PROTECTION OF THE LAWS. The Complaint was filed August 15, 1979. The Complaint was dismissed March 17, 1980. The Court of Appeals dismissed the action and it was filed October 13, 1981.

STATEMENT OF FACT FOR QUESTION NO. 1

JUDGE SOARES listened to a Motion for Summary Judgment on October 5, 1976, which was given orally, also considered to be a Speaking Motion.

DISCUSSION

A Speaking Motion for Summary Judgment is not allowed in California as per Code of Civil Procedure section 437c. The oral Motion, gave no opportunity for this Petitioner to reply

with authority. A person should have the day in Court. No hearing was given nor was a Notice sent for any hearing.

CONCLUSION

Due process was not followed as a notice was necessary with a hearing, but not given. The Speaking Motion for Summary Judgment is not legal in California.

STATEMENT OF FACT FOR QUESTION NO. 2

JUDGE CHILDERS presided at a trial with FRANK L. THOMAS the plaintiff. One juryman named E. S. GONZALES of Mexican descent was not listed in the voter registration records. A new trial was requested.

DISCUSSION

JUDGE CHILDERS would not allow a new trial on the evidence of a juror at that time in the juror selection, of not being registered to vote. There was a lack of equal protection of the laws.

CONCLUSION

Irregularities like this should be grounds for a new trial, which was denied, as the jury

had spoken.

STATEMENT OF FACT FOR QUESTION NO. 3

The decision under JUDGE CHILDERS was appealed to the three judges mentioned.

DISCUSSION

The defendant WOLFF never filed any appeal court documents, nor did he appear for the hearing. WOLFF damaged my pasture fence, and did not have to repair it, nor pay damages, in fact he won the decision by a verdict, in a stacked, packed and kangaroo court.

CONCLUSION

Due process was not followed in the allowing of a new trial, and this was affirmed by the Appeal Court. An innocent person had to repair his fence, and pay the court costs.

STATEMENT OF FACT FOR QUESTION NO. 4

FRANK L. THOMAS was not notified of a hearing December 26, 1978 in a court at which JUDGE HEATON stated sanctions would have to be paid and documents furnished.

DISCUSSION

No notice was given of the hearing. By

California Code of Civil Procedure, sanctions can be imposed for failure to act, but only after a hearing, and the failure to act after that notice is given. I was not at any hearing but forced to pay the sanctions and furnish the documents.

CONCLUSION

There was no due process in the hearing, without the presence of FRANK L. THOMAS, who paid the sanctions or would have had the Complaint dismissed.

STATEMENT OF FACT FOR QUESTION NO. 5

JUDGE HEATON allowed into evidence a false document at a trial in the THOMAS v. BYRD CASE.

DISCUSSION

The false document and its falsities were pointed out to JUDGE HEATON before he admitted the document into evidence, at which JUDGE HEATON advised the jury to strike the words of protest I had made and admitted the document.

CONCLUSION

The document was false and due process was not followed when this false document was ad-

mitted into evidence by JUDGE HEATON.

STATEMENT OF FACT FOR QUESTION NO. 6

A Continuance was requested to substantiate some of the evidence in the BYRD trial.

DISCUSSION

JUDGE HEATON would not allow this Continuance. Thus it is the taking of property and the lack of due process, when necessary evidence was needed. Others received a Continuance in similar circumstances.

CONCLUSION

A Continuance should have been allowed supporting due process of law.

STATEMENT OF FACT FOR QUESTION NO. 7

JUDGE STONE usually heard Law and Motion, but let JUDGE HEATON do it in regard to a secret hearing December 26, 1978. I objected in the followup hearing under JUDGE STONE that I had not been invited to the hearing and should thus not have to pay the sanctions.

DISCUSSION

Before sanctions and the documents have to be furnished, the party refusing has the right

to show in court why he failed to comply. Then if he fails to comply after being so ordered he can be forced to pay sanctions, but not without the hearing. HOWE the attorney used the Federal Rules, instead of the State Rules of California Code of Civil Procedure section 2034a.

CONCLUSION

JUDGE STONE did not follow due process of law when he stated he followed the law. He used the Federal Rules in a State Court, when the State Rules should have been followed.

STATEMENT OF FACT FOR QUESTION NO. 8

It took over five months to get discovery material from BYRD, in which sanctions were awarded to me for that lack of failure, but they were taken away from me by JUDGE STONE.

DISCUSSION

BYRD took over five months to give the discovery material. He defied the Court and had to pay, but the money was returned on the orders of JUDGE STONE.

CONCLUSION

There was a lack of due process and equal

treatment in the Court of JUDGE STONE. I have to have my discovery returned within 30 days, and BYRD took over five months, without any ultimate penalty.

STATEMENT OF FACT FOR QUESTION NO. 9

JUDGE STONE had awarded sanctions to FRANK L. THOMAS, for the failure of BYRD to act.

DISCUSSION

These were taken away from me and returned to BYRD. BYRD failed to act for over five months in returning the answers.

CONCLUSION

There was a lack of due process when JUDGE STONE took the sanctions away from me and had them returned to BYRD.

STATEMENT OF FACT FOR QUESTION NO. 10

BYRD made the statement that the angle of the slope was 1 1/2 to 1, when it actually was 2 to 1, a major difference.

DISCUSSION

This was perjury when the lie was in open court, and the evidence was pointed out to the judge, who did nothing about it.

CONCLUSION

Due process was not followed, when one is allowed to commit perjury in open court, when others cannot do so without a penalty.

STATEMENT OF FACT FOR QUESTION NO. 11

The counsel for BYRD asked for a Continuance in the PM, by his documents and filed papers, but appeared in the AM and was granted the Continuance.

DISCUSSION

The Continuance should not have been granted in the AM, when it was scheduled for the hearing in the PM, without my presence.

CONCLUSION

There was no due process, and the preence of FRANK to argue the Continuance to be heard in the PM, and granted in the AM, but told to FRANK in the PM, the Continuance had been granted.

STATEMENT OF FACT FOR QUESTION NO. 12

BYRD a previous defendant trespassed on my property. The demurrer was sustained.

DISCUSSION

This was a clear case of trespass by a neighbor, which violated my rights. Although a trespass it was demurred out of court without any chance to litigate the trespass.

CONCLUSION

Due process was not followed. I did not receive the right to litigate for a trespass, when the demurrer was sustained. This was a taking of my property without due process.

STATEMENT OF FACT FOR QUESTION NO. 13

An action was filed against BRITTON the defendant. He answered the Complaint. Then his counsel got the right from JUDGE STONE to file a demurrer and have some of the causes of action demurred out of court. This after the Answer had been filed.

DISCUSSION

The demurrer must be made within 10 days but in this case it was over a year later before the demurrer was acted upon and allowed. JOYCE the counsel had 69 days to act, when 10 is the limit. The demurrer was made after the

answer had been made.

CONCLUSION

Because of the loss, it was the lack of due process and the taking of property without due process. After the answer was filed the case was at issue, and no need for a demurrer at this point. JUDGE STONE was unfair and does not follow the laws.

STATEMENT OF FACT FOR QUESTION NO. 14

THOMAS notified JOYCE, the counsel I could not be at the hearing. The hearing was held without my presence. JUDGE STONE asked JOYCE to make an order transferring the Superior Court Case to the Municipal Court.

DISCUSSION

Acts of law like filing a Writ of Mandate were not allowed, due to the lack of JOYCE in not sending a copy of the Order to this party, which has never been done by JOYCE to this day.

CONCLUSION

There was a lack of due process, when I could not be present at the hearing, after notifying in adequate time I could not be there.

It was the taking of my property without due process.

STATEMENT OF FACT FOR QUESTION NO. 15

The Superior Court Case with JOYCE counsel was transferred to the Municipal Court. JUDGE JONES was the presiding judge, in which he stated he would declare a non suit, in that there was no negligence on the part of the surveyor. There was no malpractice by the surveyor. There was no breach of the contract.

DISCUSSION

BRITTON the surveyor who surveyed my property showed me where stakes that were placed three feet in from the property line, indicated the neighbor had fences on my property. But he was wrong. There was no malpractice, but this was a highly skilled technician, a surveyor, who surveyed wrong. JONES stated there was no breach of the contract, although the offset stakes were not in three feet from the property line on the west side of the property. A non suit was allowed when a jury was sitting in attendance.

CONCLUSION

A jury was selected to determine the issues, but they were determined by JONES. It is believed that one of the jury was handpicked to give a certain decision adverse to the plaintiff FRANK L. THOMAS. But the other three jurors could have prooved plaintiff was right. But it was not allowed to go to the jury. The non suit was a lack of due process.

STATEMENT OF FACT FOR QUESTION NO. 16

In the case in which false evidence was admitted into evidence over my protests, a Motion was made for a new trial. No notice of the time of this hearing was given to me. The hearing was held with HOLBERT, counsel for BYRD and JUDGE HEATON. The request for a new trial was denied, but no notice was ever sent of this denial, by either HOLBERT or HEATON.

DISCUSSION

There is a right to a new trial, where the old trial was biased or irregularities occurred like false evidence admitted into evidence. HOLBERT offered the evidence and HEATON allowed

it into evidence over my strong objections.

HOLBERT had formulated a document dated the day before the hearing, and this document was filed on the day of the hearing. HOLBERT is required by law to notify of any proceedings in which I am not present, but no copy of that document was ever sent to this address, being it appears they were trying to keep the meeting secret. It was a scheme to have the Motion answered, but they conveniently left me out of the picture. When HEATON saw that the jury was being convinced of my good cause and the trespass, he asked counsel HOLBERT to ask for a non suit, which is a way of taking away a decision when the jury is sitting and ready to decide the issues.

CONCLUSION

This was a denial of my due process, in which they had a hearing and never invited me. A new trial should have been given. This is typical of the Conspiracy and Fraud in denying equal protection of the laws to me in the courts of the State of California. If I make

some error, that throws it out of court and I have to walk the straight and narrow line, but the attorneys and judges can flaunt the law when it is for me and get away with it. It has cost me in the thousands of dollars and also detrimental to my reputation. They refer me as the vexatious litigant, when the decision was that of a judge, not a jury, and it was founded on a scintilla of evidence, if it could be called that. It should not even be called a scintilla of evidence, as it was only 38 words.

PRAYER

WHEREFORE, The Court should grant the Petition for the Writ of Certiorari to prevent this lack of due process, inequality, lack of justice, and abuse to the citizens trying to gain their rights, human and otherwise.

Respectfully submitted, January 2, 1982

Frank L Thomas

FRANK L. THOMAS
2080 E. Hillcrest Drive
Thousand Oaks, California 91362

No Phone

APPENDIX

Exhibit		Page
"A"	JUDGMENT DISMISSING COMPLAINT AND ACTION IN THE U. S. DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA	1
"B"	MEMORANDUM OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT	3

APPENDIX "A"

May 8, 1980
Clerk U. S. District
Court Central District
of California
By _____ Deputy

ENTERED
May 9, 1980
CLERK, U. S. DISTRICT
COURT CENTRAL DISTRICT
OF CALIFORNIA
By DEPUTY

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

FRANK L. THOMAS, Plaintiff vs JUDGES ROBERT J. SOARES, JOHN A. CHILDERS, MARVIN H. LEWIS, RICHARD C. HEATON, ROBERT L. SHAW, STEVEN J. STONE, and FRED A. JONES Defendants	No. CV 79-3064-LTL JUDGMENT

This matter came on for hearing before the Court on March 17, 1980, on the motions of defendants to dismiss. For those reasons stated from the bench on March 17, 1980, the action is dismissed with prejudice for failure to state a claim upon which relief may be granted.

The Clerk will serve copies of this Judg-

APPENDIX "A" - continued

ment on counsel of record by United States mail.

Dated this day of May, 1980.

/S/ LAWRENCE T. LYDICK

LAWRENCE T. LYDICK
UNITED STATES DISTRICT JUDGE

APPENDIX "B"

FILED

OCT 13, 1981

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FRANK L. THOMAS, Plaintiff-Appellant, v. JUDGES ROBERT J. SOARES, JOHN A. CHILDERS, MARVIN H. LEWIS, RICHARD C. PEATON, ROBERT L. SHAW, STEVEN J. STONE and FRED A. JONES, Defendants-Appellees	No. 80-5242 D. C. No. C-79-3064 LTL MEMORANDUM

Appeal from the United States District Court for the Central District of California Lawrence T. Lydick, District Judge, Presiding; Argued & Submitted 10/6/81

Before: SNEED, KENNEDY and SKOPIL, CIRCUIT JUDGES.

Appellant brought this action pro se against seven court judges under 42 U. S. C. section 1983. The district court dismissed the action for failure to state a claim. We affirm. State judges are immune from liability under 42 U. S. C. section 1983 for judicial actions not taken in the "clear absence of all

APPENDIX "B" - continued

jurisdiction." Stump v. Sparkman, 435 U. S. 349, 356-57 (1978) (quoting Bradley v. Fisher, 80 U. S. (13 Wall.) 335, 351 (1872)); Beard v. Udall, No. 79-3023 (9th Cir. June 26, 1981); O'Neil v. City of Lake Oswego, 642 F. 2d 367 (9th Cir. 1981). Appellant alleged no facts that suggest the judges are not entitled to judicial immunity. Conclusory allegations to the effect that the judges engaged in a conspiracy to defraud the appellant are not sufficent to state a claim.

Affirmed.

AFFIDAVIT OF SERVICE

(Certificate of Service)

I certify that this date I have caused to be served 3 copies of the PETITION FOR WRIT OF CERTIORARI on MARY C. WARD, ASSISTANT COUNTY COUNSEL, 800 South Victoria Avenue, Ventura, California 93009 by U. S. POSTAL SERVICE, postage prepaid, from Thousand Oaks, California.

_____

FRANK L. THOMAS

Subscribed and affirmed before me this ____day of January, 1982.

_____

Notary Public

My Commission expires on_____